(96)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 107/2006

Rikhee Ram Mahilang and another.

Versus

State of Chhattisgarh

Post for Judgment : 17.02.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

(97)

A.F.R.
7.2.'06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.107/2006

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Rikhee Ram Mahilang and another

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State of Chhattisgarh

Shri Shivendu Pandya, learned counsel for the applicant.
Shri Ashish Shukla, learned G.A./Addl. Public Prosecutor for the State.

ORDER

(Delivered on 17th February, 2006)

1. This Criminal Revision is directed against the order dated 8.2.2006 passed by Shri 11th Addl. Sessions Judge (F.T.C.), Raipur, in Sessions Case No. 69/2006 whereby a charge under Section 306 read with Section 34 I.P.C. was framed against the applicants.

2. Brief facts are that on 19.7.2004, Bhushanlal Verma committed suicide by hanging himself inside his house at about 4.30 p.m. Merg intimation (No. 78/2004) was lodged by Bhushanlal Verma, brother of the deceased on 19.7.2004 at 7.00 p.m. at P.S. Dharsiva wherein no cause for the suicide committed by Bhushanlal Verma was stated. During investigation, the Prosecution Officer in reply to a letter of the City Superintendent of Police, Distt. Korba, regarding merg No. 78/2004 opined on 14.9.2005 that on 16.7.2004, Nikhiram and others had levelled an allegation

against Bhushanlal Verma that he was responsible for damaging the tractor of Sunder Singh and therefore a *prima-facie* offence of abetment of suicide exists. Consequently, Crime No. 322/2005 was registered on 18.9.2005 at P.S. Dharsiva i.e. more than a year and two months after the suicide committed by Bhushanlal Verma. A challan under Section 306 of Cr.P.C. was filed against the applicants and one co-accused Kamleshdas Vaishnav.

3. Shri Shivendu Pandya, learned counsel for the applicant has argued that even if the entire prosecution story is believed to be correct, no *prima-facie* case under Section 306 of I.P.C. exists against the applicants since there was not even an iota of material on record to show that the applicants had instigated the abetment of suicide by Bhushanlal Verma. Learned counsel, therefore, prayed that impugned order was liable to be set aside. On the other hand, Shri Ashish Shukla, learned Govt. Advocate has opposed the prayer, though formally.

4. It is settled law that for purposes of framing of charge against the accused persons, a *prima-facie* case must exist. The test of finding out a *prima-facie* case against the accused is that if the entire material produced before the Court by the prosecution is taken at its face value, it would *prima-facie* substantiate the guilt of the accused persons for the offence alleged. Applying the above test to the facts of the present case, it is found that on 19.7.2004, Bhushanlal Verma quietly committed suicide at 4.30 p.m. inside his house by hanging himself. The merg-intimation

lodged by his brother did not reveal any cause for the suicide. The statement of Saraswati Bai recorded on 21.9.2005 under Section 161 Cr.P.C only shows that the applicants and one Kamleshdas Vaishnav were searching for her husband and had taken her husband with them. Late at night, when her husband returned, he told her that an allegation was levelled against him that he had damaged the tractor of one person of Kumhari. The statement of Behraram dated 21.9.2005 also shows that the applicants were searching for Bhushanlal Verma for making good the loss occasioned to the tractor. Shri Ashish Shukla, learned Govt. Advocate has also not been able to point out any material on record which would lead to the inference that the applicants had instigated the abetment of suicide by Bhushanlal Verma.

5. Abetment has been defined in Section 107, IPC, which reads as under:-

"a person abets the doing of a thing, who-*First*, Instigates any person to do that thing; or

Secondly, Engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, Intentionally aids, by any act or illegal omission, the doing of that thing."

Under Section 109, IPC, punishment of abetment has been provided, which reads as under:-

"Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for punishment of such abetment, be punished with the punishment provided for the offence.

Explanation:- An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

Making a person liable for an offence punishable under Section 306 of the Penal Code, the prosecution has to establish that such person has abetted the commission of suicide. Unless the alleged act of an accused falls under any of the three categories of acts, enumerated in Section 107, Penal Code, the same would not amount to abetment. It is settled law that in order to establish an offence under Section 306 of I.P.C. against the accused persons, the prosecution has to show that the suicide was so direct, co-related, immediate and proximate cause of the instigation offered by the accused persons. In this case, there is not even an iota of material to show that the applicants in any manner instigated the commission of suicide by Bhushanlal Verma. Thus, the order dated 8.2.2006 framing charge against the applicants under Section 306 of I.P.C. cannot be sustained and is liable to be set aside.

6. This revision has been preferred by the appellants/accused persons Nikhiram and Balraj Singh and not by the 3rd accused Kamleshdas Vaishnav. In **Gurucharan Kumar And Another Vs. State of Rajasthan** reported in ***2003 Vol.2 Supreme Court Cases 698***, it was held that in a case where one of the accused has not preferred an appeal, but his case stands on the same footing as that of the other accused who have preferred the appeal, such person should not be denied the benefit which is extended to the other accused. In **Vajrapu Sambayya Naidu Vs. State of Andhra Pradesh** reported in ***2003 Cri. L.J. 4433 Supreme Court,*** it was held that since the appellants were acquitted of all charges, other accused persons who had not preferred the appeal, would also be in the interest of justice entitled to the benefit of the decision. In view of the aforesaid decisions, it appears just that the charge under Section 306 of I.P.C. framed against Kamleshdas Vaishanav is also set aside while allowing his revision.

7. In the result, this revision is allowed. Order dated 8.2.2006 framing charge under Section 306 read with Section 34 of I.P.C. against the applicants Nikhiram, Balraj Singh and also against the co-accused Kamleshdas Vaishnav is set aside. Since there are no sufficient grounds for proceeding against the accused/applicants namely Nikhiram, and Balraj Singh and the co-accused Kamleshdas Vaishnav, they are discharged under Section 227 of Cr.P.C.

Sdl-
Dilip Raosaheb Deshmukh
Judge

Priya